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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON AT TACOMA

8 KERRY T. TUCKER, a single person,

9 Plaintiff,

10 v.

11 THE CITY OF LAKEWOOD, a  
12 political subdivision of the State of  
13 Washington, acting by and through the  
14 Lakewood Police Department; JAMES  
15 SYLER and "JANE DOE" SYLER,  
husband and wife, and the marital  
community composed thereof, and  
JOHN/JANE DOES 1-5,

16 Defendants.  
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**NO. 3:15-cv-05355**

**COMPLAINT FOR PERSONAL  
INJURY AND DAMAGES**

18 COMES NOW the plaintiff, Kerry T. Tucker, by and through his attorneys of  
19 record, Patrick R. West of West Law Firm, P.S., and hereby alleges against the  
20 defendants as follows:  
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**I. JURISDICTION AND VENUE**

1.1 This action is brought pursuant to 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments to the United States Constitution. The court has jurisdiction over this action under 28 U.S.C. §1331 and 1343.

1.2 The claims alleged herein arose in the City of Lakewood, County of Pierce, Washington. Therefore, venue in the Western District of Washington at Tacoma is proper pursuant to 28 U.S.C. §1391(b)(2).

**II. PARTIES**

2.1 The plaintiff, Kerry T. Tucker, at all times pertinent hereto was a resident of Pierce County, Washington, and all acts related to the matter alleged herein occurred in Pierce County, Washington.

2.2 The defendant, City of Lakewood, was and is a political subdivision of the state of Washington and at all times material hereto acted through the Lakewood Police Department.

2.3 The Lakewood Police Department employed and trained James Syler, a commissioned officer. Officer Syler was an Officer in the Lakewood Police Department at all times relevant hereto. The acts of misfeasance and malfeasance alleged herein by defendant Syler were done for and on behalf of himself individually, for and on behalf of his marital community, and for and on behalf of the City of Lakewood and the Lakewood Police Department.

2.5 The Lakewood Police Department owned, trained, maintained, utilized, and

1 commissioned a German shepherd K-9 officer known as "Astor" at all times relevant  
2 hereto.

3 2.6 At all times herein, the above named defendants, and each of them, acted  
4 within the course and scope of their employment.

5 2.7 At all times mentioned herein, the defendants, and each of them, acted  
6 under color of state law.

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8 **III. FACTS**

9 3.1 At approximately 12:43 a.m. on or about June 27, 2012, Officer James  
10 Syler of the Lakewood Police Department was called to 8012 31<sup>st</sup> Ave. SW Lakewood,  
11 WA 98499 to assist Lakewood police officers searching for a felony warrant suspect.  
12 Officer Syler was advised that the suspect, Robert Serpa, had a felon warrant and had  
13 reportedly fled on foot into a wooded area nearby.

14 3.2 Lakewood police officers were called to the 8012 31<sup>st</sup> Ave. SW location  
15 because a female resident there had called 911 after an alleged dispute with Robert  
16 Serpa, but Serpa had reportedly fled the residence before the officers arrived. The  
17 female resident reported that Serpa fled into the wooded area nearby.

18 3.3 Officer Syler then removed the K-9 "Astor" from his vehicle to assist the  
19 Lakewood Officers in search for Robert Serpa in the wooded area nearby. At that time,  
20 there were a number of other individuals in the area. Officer Syler released Astor and  
21 Astor attacked the plaintiff, Kerry T. Tucker, an innocent citizen. Astor continued to  
22 maul plaintiff Tucker, using the bite and hold techniques for which he was trained.

23 Astor continued to inflict injuries on plaintiff Tucker, but Officer Syler did not recall

1 the K-9 until plaintiff Tucker complied with his order to show his hands while he was  
2 being severely bitten and mauled by Astor.

3 3.4 During the attack, plaintiff Terry Tucker, who was only 23 years old at the  
4 time of the event, suffered severe trauma and permanent injuries to his leg.

5 3.5 After the attack, Officer Syler further detained plaintiff Kerry Tucker and  
6 threatened him with arrest.

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8 **IV. FIRST CAUSE OF ACTION - NEGLIGENCE**

9 5.1 Plaintiffs reallege and hereby incorporate each and every allegation set forth  
10 above.

11 5.2 The Lakewood Police Department had a duty to protect public safety and  
12 the life or physical safety of innocent citizens.

13 5.3 The Lakewood Police Department was obligated by ordinance, statute, and  
14 common law principles to train its K-9 units such that the K-9 would respond to all  
15 authorized commands.

16 5.4 The Lakewood Police Department was obligated by ordinance, statute, and  
17 common law principles to train its K-9 unites to track and apprehend individuals using  
18 scent discrimination in order to prevent mistaken identities and death or injury to  
19 innocent citizens.

20 5.5 The actions of Officer Syler and K-9 Astor wherein the latter was released  
21 from control and failed to respond to orders of control, or properly track and apprehend  
22 targeted suspect, violated the policies and procedures of the Lakewood Police  
23

1 Department as related to the field force use of police dogs as such constituted negligent,  
2 careless, and unlawful conduct.

3 **V. SECOND CAUSE OF ACTION – CIVIL RIGHTS VIOLATIONS**

4 6.1 Plaintiff realleges and hereby incorporates each and every allegation set  
5 forth above.

6 6.2 At all times material hereto, defendants were acting under color of state law.

7 6.3 At all times material hereto, plaintiff had constitutionally protected liberty  
8 interests in life, personal security, bodily integrity, being free from harmful physical  
9 contact or emotional injury, freedom on travel, and had constitutionally protected rights  
10 to equal protection, as well as procedural and substantive due process of law.

11 6.4 The defendant City of Lakewood, acting by and through the Lakewood  
12 Police Department and its officers in their official capacities, as a matter of policy,  
13 custom, or practice: a) trained K-9 Astor to find and bite and hold persons posing as  
14 suspects; b) failed to adequately train its officers in the limits the constitution places on  
15 the use of police dogs, or alternatively, failed to communicate its policy regarding  
16 constitutional use of police dogs to its police officers; c) failed to adequately supervise  
17 its defendant officers with respect to such officers' constitutional deprivations; and d)  
18 failed to address these failures despite being informed of such policy and customs  
19 resulting in multiple innocent citizens being attacked in the same or similar fashion.  
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21 6.5 K-9 officer Astor continuously bit and held plaintiff Kerry Tucker in public  
22 by continuous and repetitive biting and mauling before Lakewood Police Officer Sylar  
23 was able to locate and retake control of Astor.

1       6.6     It was the intention of the Lakewood Police Department that K-9 officer  
2 Astor would seize by biting and holding an individual it apprehends when released to do  
3 so. This is the known and intended course of conduct utilized by the Lakewood Police  
4 Department.

5       6.7     The utilization of bite and hold techniques in the training of K-9 units  
6 constitutes a policy and practice of the Lakewood Police Department that led to the  
7 deprivation of the plaintiff Kerry Tucker's civil rights as related herein.

8       6.8     The actions of officer Syler and K-9 officer Astor were reckless and/or  
9 made with deliberate indifference and were unreasonable in nature and constituted use  
10 of excessive force in violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United State  
11 Constitution and 42 U.S.C. §1983.

12       6.9     At the time of the attack the defendants had no reasonable grounds to stop,  
13 search, or detain plaintiff Kerry Tucker or to otherwise violate his civil rights.

14       6.10    The defendants, by the use and training of K-9 officer Astor with bite and  
15 hold techniques acting under color of law, unlawfully detained and seized plaintiff  
16 Kerry Tucker without probable cause, reasonable suspicion, or other justification in  
17 violation of his right to freedom from unreasonable search and seizures guaranteed by  
18 the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and by 42 U.S.C. §1983.

19       6.11    The defendants, by the use and training of K-9 officer Astor with bite and  
20 hold techniques acting under color of law, unlawfully detained and seized plaintiff  
21 Kerry Tucker without probable cause, reasonable suspicion, or other justification in  
22  
23

1 violation of his right to freedom from unreasonable search and seizures guaranteed by  
2 Washington Constitution Article 1 §§ 3 and 7.

3 **VI. DAMAGES**

4 7.1 Plaintiff reallages and hereby incorporates each and every allegation set  
5 forth above.

6 7.2 As a direct and proximate result of defendant's negligence referenced  
7 above, plaintiff incurred past and future medical expenses, past and future income loss,  
8 permanent disability, impaired earning capacity, general damages for pain and  
9 suffering, loss of enjoyment of life and other damages, all in amounts to be proven at  
10 the time of trial.

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12 WHEREFORE, plaintiff prays for judgment against the defendants, and each of  
13 them, and their marital community, for damages as alleged, plus costs, and reasonable  
14 attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and as otherwise authorized by  
15 statute or law, and for such other and further relief as the court deems just and proper.

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17 DATED this 27<sup>th</sup> day of May, 2015.

18  
19 WEST LAW FIRM, P.S.

20 By: 

21 Patrick R. West, WSBA #41949

22 Thomas J. West, WSBA #5857

23 Attorneys for Plaintiff